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COMMONWEALTH ex rel. MOORE, Auditor, etc. v. SMALLWOOD MEMORIAL INSTITUTE.

Jan. 16, 1919.

[97 S. E. 805.]

1. Taxation (§ 494 (1)*)—Assessment—Review by Court—Persons Entitled to Relief.—The holder of the equitable title to property which is assessed in the name of his trustee may apply for and receive relief from an erroneous assessment under Code, §§ 567, 568, 571, providing for redress to any person assessed with taxes aggrieved by such assessment.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 106.]

2. Taxation (§ 242 (2)*)—Exemption—Property Devoted to Educational Purposes.—Land deeded to an educational institution and cultivated for its benefit, together with furniture, furnishings, books, and instruments thereon, including farming implements, is exempt, under Const. 1902, § 183, subsec. (d), exempting from taxation property wholly devoted to educational purposes.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 346; 13 Va.-W. Va. Enc. Dig. 114.]

3. Taxation (§ 242 (3)*)—Exemption—Educational Institutions.—Land belonging to an educational institution, but not used for school purposes, nor adjoining property on which school building was located, is not exempt from taxation under Const. 1902, § 183, subsec. (d), exempting from taxation property exclusively devoted to educational purposes.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 346; 13 Va.-W. Va. Enc. Dig. 114.]

4. Taxation (§ 242 (5)*)—Exemption—Separation of Exempt from Unexempt Property.—An electric light and power plant, located on property exempt from taxation as being used for educational purposes, within Const. 1902, § 183, subsec. (d), may be taxed where, in addition to supplying the school, it is used to supply a neighboring town and its citizens with light, if it and its value can be separated from the remainder of school property exclusively used for school purposes.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 346; 13 Va.-W. Va. Enc. Dig. 114.]

Appeal from Circuit Court, Surry County.

Proceedings by the Smallwood Memorial Institute for relief from erroneous assessment of taxes. The relief prayed was granted, and the Commonwealth, on the relation of one Moore,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

as Auditor, etc., appeals. Affirmed in part, reversed in part, and remanded.

Plummer & Bohannon, of Petersburg, for appellant.
Carter, Crawford & Redd, of Richmond, for appellee.

HONAKER *v.* WHITLEY.

Jan. 16, 1919.

[97 S. E. 808.]

1. Physicians and Surgeons (§ 18 (8)*)—Action for Malpractice.
Evidence.—In an action against a dentist for malpractice, where it appeared that plaintiff, who had consulted defendant and then another dentist, suffered a fractured jaw as a result of the treatment of one or the other, evidence held insufficient to establish that defendant fractured plaintiff's jaw, so as to warrant judgment against him.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 205.]

2. Negligence (§ 121 (5)*)—Proof—Cause of Injury.—Where injuries have resulted from one or two causes for one of which defendant is responsible, plaintiff must fail if his evidence does not show that the damages are produced by the former cause.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 372.]

Error-to Law and Equity Court of City of Richmond.

Action by A. A. Whitley against E. S. Honaker. There was a judgment for plaintiff, and defendant brings error. Reversed, and new trial granted.

Byrd, Fulton & Byrd and *W. C. Pulliam*, all of Richmond, for plaintiff in error.

Jas. R. Sheppard, Jr., and *T. J. Moore*, both of Richmond, for defendant in error.

E. I. DU PONT DE NEMOURS & CO. *v.* SNEAD'S ADM'R.

Jan. 16, 1919.

[97 S. E. 812.]

1. Pleading (§ 9*)—Matters of Law.—Declaration need not state existence of legal duty, but only facts out of which duty arises; the legal duty being a matter of law of which the court takes judicial notice.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 218.]

2. Master and Servant (§ 256 (1)*)—Action for Tort of Servant—Pleading.—In action for damages for death of plaintiff's intestate,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.